



## **Agricultural Marketing Service**

### **7 CFR Part 993**

**[Doc. No. AMS-SC-22-0053; SC22-993-1 PR]**

#### **Dried Prunes Produced in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Prune Marketing Committee (Committee) to increase the assessment rate established for the 2022-23 crop year and subsequent fiscal years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be submitted to the Docket Clerk electronically by Email: [MarketingOrderComment@usda.gov](mailto:MarketingOrderComment@usda.gov) or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Rymer, Marketing Specialist, or Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, or Email: [Jefferym.Rymer@usda.gov](mailto:Jefferym.Rymer@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 993, as amended (7 CFR part 993), regulating the handling of dried prunes grown in California. Part 993 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers and handlers of dried prunes operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California prune handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable dried prunes for the 2022-23 crop year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate from \$0.28 per ton of salable dried prunes, the rate that was established for the 2020-21 and subsequent crop years, to \$0.33 per ton of salable dried prunes for the 2022-23 and subsequent crop years.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed

in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2021-22 and subsequent crop years, the Committee recommended, and AMS approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 28, 2022, and unanimously recommended 2022-23 crop year expenditures of \$26,700 and an assessment rate of \$0.33 per ton of salable dried prunes handled for the 2022-23 and subsequent crop years. In comparison, last year's budgeted expenditures were \$26,212. The proposed assessment rate of \$0.33 per ton is \$0.05 higher than the rate currently in effect. The Committee recommended increasing the assessment rate due to a lower than normal crop size produced in the 2021-22 crop year and a projected lower crop size again for the 2022-23 crop year. The Committee projects handler receipts of 75,000 tons of assessable dried prunes from the 2022-23 crop year, which is the same level that was projected for the 2021-22 crop year.

The major expenditures recommended by the Committee for the 2022-23 crop year include \$14,935 for personnel costs, \$11,125 for operating expenses, and \$640 for contingencies. Budgeted expenditures for the 2021-22 crop year were \$14,025, \$12,000, and \$187, respectively.

Dried prunes harvested in 2022 will be marketed over the course of the 2022-23 crop year, which begins on August 1, 2022. The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The expected 75,000 tons of assessable dried prunes from the 2022-23 crop would generate \$24,750 (75,000 tons salable dried prunes multiplied by \$0.33 assessment rate) in assessment revenue at the proposed assessment rate. The \$1,950 balance of funds needed to cover budgeted expenditures would come from funds carried over from the previous crop year.

The 2022-23 crop year assessment rate increase should be appropriate to ensure the Committee has sufficient revenue to fund its recommended 2022-23 crop year budgeted expenditures.

The Committee derived the recommended assessment rate by considering anticipated crop year expenses, actual prune tonnage received by handlers during the 2021-2022 crop year, an estimated 2022-23 crop of 75,000 tons of salable dried prunes, and the anticipated funds that will be carried over into the new crop year. Income derived from handler assessments (\$24,750), and the balance carried over from the previous crop year (\$1,950) are expected to be adequate to cover budgeted expenses (\$26,700).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2022-23 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by AMS.

## **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of dried prunes in the production area and 27 handlers subject to regulation under the Order. Small agricultural producers of prunes are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$3,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average producer price for California dried prunes for the 2021-22 crop was \$2,000 per ton. NASS further reported 2021-22 crop year production for California dried prunes was 74,000 tons. The estimated total 2021-22 crop year value of California dried prunes is \$148,000,000 (74,000 tons times \$2,000 per ton equals \$148,000,000). Dividing the estimated total crop value by the estimated number of producers (600) yields an estimated average receipt per producer of \$246,667 (\$148,000,000 divided by 600), so the majority of producers would have annual receipts less than the \$3,000,000 SBA small agricultural producer threshold for prunes.

In addition, according to AMS Market News data, the reported average terminal market price for 2021 for California dried prunes was \$38.93 per 28-pound carton. Dividing the average carton price by the 28-pound carton size yields an estimated price

per pound of \$1.39 (\$38.93 average price per 28-pound carton divided by 28 pounds). The handler price for prunes is \$2,780 per ton (\$1.39 per pound multiplied by 2,000 pounds per ton equals \$2,780 per ton). Multiplying the 2021-22 California dried prune estimated production of 74,000 tons by the estimated average price per ton of \$2,780 equals \$205,720,000.

Dividing this figure by the 27 regulated handlers yields estimated average annual handler receipts of \$7,619,259 (\$205,720,000 divided by 27 handlers), which is, below the SBA threshold for small agricultural service firms. Therefore, using the above data, the majority of producers and handlers of California dried prunes may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2022-23 and subsequent crop years from \$0.28 to \$0.33 per ton of salable dried prunes. The Committee unanimously recommended 2022-23 crop year expenditures of \$26,700 and an assessment rate of \$0.33 per ton of salable dried prunes. The proposed assessment rate of \$0.33 is \$.05 higher than the current rate. The Committee expects the industry to handle 75,000 tons of dried prunes during the 2022-23 crop year. Thus, the \$0.33 per ton of salable dried prunes should provide \$24,750 in assessment income (75,000 tons multiplied by \$0.33). The Committee also expects \$1,950 to be carried over into the 2022-23 crop year, which begins August 1, 2022. Income derived from handler assessments, along with funds carried over from the previous crop year, should be adequate to meet budgeted expenditures for the 2022-23 crop year.

The major expenditures recommended by the Committee for the 2022-23 crop year include \$14,935 for personnel costs, \$11,125 for operating expenses, and \$640 for contingency reserve. Budgeted expenses for these items during the 2021-22 crop year were \$14,025, \$12,000, and \$187, respectively. The Committee deliberated the proposed budget categories and decreased their budget for office supplies and expenses to account

for the 2022-23 crop year being a non-election year, therefore requiring less office supplies. Overall, the 2022-23 crop year budget of \$26,700 is \$488 more than the \$26,212 budgeted for the 2021-22 crop year.

The Committee recommended increasing the assessment rate due to a lower than normal crop size produced in the 2021-22 crop year and a projected lower crop size again for the 2022-23 crop year. At the current assessment rate, assessment income would equal \$21,000 (75,000 tons multiplied \$0.28), an amount along with the carry over funds from the previous year sufficient to cover the Committee's anticipated 2022-23 expenditures of \$26,700.

Prior to arriving at this budget and the proposed assessment rate, the Committee considered information from various sources including the Committee's Executive, Marketing, Inspection, and Research subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the dried prune industry and the expected dried prune production. The assessment rate of \$0.33 per ton of salable dried prunes was derived by considering anticipated expenses, the projected volume of assessable dried prunes, the current monetary balance expected to be carried into the upcoming crop year, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2021-22 crop year was \$2,000 per ton, and the estimated quantity of assessable dried prunes harvested in the 2021-22 crop year was 74,000 tons, which would yield total producer revenue \$148,000,000 (\$2,000 per ton multiplied by 74,000 tons). Therefore, utilizing the assessment rate of \$0.33 per ton, assessment revenue for the 2021-22 crop year, as a percentage of total producer revenue, would be approximately 1.65 percent ( $\$0.33 \text{ multiplied by } 74,000 \text{ tons divided by } \$148,000,000 \text{ multiplied by } 100$ ).

This proposed action would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may

be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meetings were widely publicized throughout the production area. The dried prune industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be

sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this rule.

**List of Subjects in 7 CFR Part 993**

Marketing agreements, Plum, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 993 as follows:

**PART 993- DRIED PRUNES PRODUCED IN CALIFORNIA**

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 993.347 is revised to read as follows:

**§ 993.347 Assessment rate.**

On and after August 1, 2022, an assessment rate of \$0.33 per ton of salable dried prunes is established for California dried prunes.

**Erin Morris,**

*Associate Administrator,*

*Agricultural Marketing Service.*

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